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**DEPARTMENT OF HOMELAND SECURITY
BUREAU OF CUSTOMS AND BORDER PROTECTION**

DEPARTMENT OF THE TREASURY

19 CFR Part 10

USCBP-2008-0105

RIN 1505-AC07

COST OR VALUE OF FOREIGN REPAIRS, ALTERATIONS, OR PROCESSING

AGENCIES: Customs and Border Protection, Department of Homeland Security;
Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the U. S. Customs and Border Protection (CBP) Regulations to exclude from the dutiable value of repairs, alterations, or processing performed abroad on articles exported from the United States and returned under subheading 9802.00.40, 9802.00.50, or 9802.00.60, Harmonized Tariff Schedule of the United States (HTSUS), the value of U.S.-origin parts used in the foreign repairs, alterations, or processing. The proposed changes would provide an incentive to use U.S.-origin parts in the foreign repairs, alterations, or processing of articles entered under the above-referenced HTSUS provisions.

DATES: Comments must be received on or before [insert date 60 days from date of publication in the **Federal Register**].

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for

submitting comments via docket number USCBP-2008-0105.

- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U. S. Customs and Border Protection, 799 9th Street, N.W. (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, N.W., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Monika Brenner, Regulations and Rulings, Office of International Trade, 202-325-0038.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to CBP will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See ADDRESSES above for information on how to submit comments.

Background

Subheadings 9802.00.40 and 9802.00.50, HTSUS, provide a partial duty exemption for articles returned to the United States after having been exported to be advanced in value or improved in condition by repairs or alterations. Subheading 9802.00.40 encompasses articles repaired or altered abroad pursuant to a warranty, while subheading 9802.00.50 encompasses articles repaired or altered abroad other than pursuant to a warranty. Articles entitled to classification under these tariff provisions are assessed duty based upon the value of the repairs or alterations.

Subheading 9802.00.60, HTSUS, provides a partial duty exemption for articles of metal manufactured in the United States that are exported for further processing and then returned to the United States for further processing. Articles entitled to classification under this tariff provision are assessed duty based upon the value of the processing performed outside the United States.

U.S. Note 3(a), subchapter II, Chapter 98, HTSUS, states, in pertinent part, that for purposes of subheadings 9802.00.40, 9802.00.50, and 9802.00.60, HTSUS, the “value of

repairs, alterations, processing or other change in condition outside the United States” is the cost to the importer of such change, or if no charge is made, the value of such change.

Section 10.8 of the CBP regulations (19 CFR 10.8), which implements subheadings 9802.00.40 and 9802.00.50, provides in paragraph (d) that the “cost or value of repairs or alterations” is limited to the cost or value of the repairs or alterations actually performed abroad, which will include all domestic and foreign articles furnished for the repairs or alterations, but will not include any of the expenses incurred in this country whether by way of engineering costs, preparation of plans or specifications, furnishing of tools or equipment for doing the repairs or alterations abroad, or otherwise.

Similarly, § 10.9 of the CBP regulations (19 CFR 10.9(d)), which implements subheading 9802.00.60, provides in paragraph (d) that the “cost or value of processing” is limited to the cost or value of the processing actually performed abroad, which will include all domestic and foreign articles used in the processing, but will not include the exported U.S. metal article or any of the expenses incurred in this country whether by way of engineering costs, preparation of plans or specifications, furnishing of tools or equipment for doing the processing abroad, or otherwise.

The words “which will include all domestic and foreign articles furnished for the repairs or alterations” in § 10.8(d) and the words “which will include all domestic and foreign articles used in the processing” in § 10.9(d) were added to those regulatory provisions by T.D. 72-119, which was published in the **Federal Register** on May 2, 1972 (37 FR 8867). Neither T.D. 72-119 nor the notice of proposed rulemaking (published in the **Federal Register** on May 4, 1971 (36 FR 8312)) which preceded the T.D. included any explanation or discussion regarding the above-referenced language added to §§ 10.8(d) and

10.9(d). However, the addition of this language has had the effect of requiring the value of U.S.- and foreign-origin parts used in the foreign repairs, alterations, or processing to be included in the dutiable value of articles entered under subheadings 9802.00.40, 9802.00.50, and 9802.00.60, HTSUS.

Explanation of Amendments

As indicated in the above background discussion, there is nothing in the underlying statutory provisions (subheadings 9802.00.40, 9802.00.50, and 9802.00.60 and U.S. Note 3(a), subchapter II, Chapter 98, HTSUS) that mandates the inclusion of the value of U.S.-origin parts in the dutiable value of articles entered under these tariff provisions. The policy of requiring the value of U.S.-origin parts to be included in dutiable value under these circumstances, as reflected in the implementing regulations, clearly provides no incentive to use U.S., as opposed to foreign, parts in the foreign repairs, alterations, or processing. In order to encourage the use of U.S.-origin parts in the foreign repairs, alterations, or processing of articles entered under subheading 9802.00.40, 9802.00.50, and 9802.00.60, CBP is proposing to amend §§ 10.8(d) and 10.9(d) by removing the words “domestic and” in the second sentence of each of these regulatory provisions.

This document also proposes to edit §§ 10.8(d) and 10.9(d) by replacing the word “shall” each place it appears with the word “will”.

The Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. The proposed rule would have the effect of excluding the value of U.S.-origin parts from the dutiable value of articles entered under

subheadings 9802.00.40, 9802.00.50, and 9802.00.60, HTSUS, thereby providing an incentive to use U.S.-origin parts in the foreign repairs, alterations, or processing of articles entered under these HTSUS provisions. As a result, it is expected that the proposed amendments will have the potential of providing a slight economic benefit for U.S. commercial interests. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This document does not meet the criteria for a “significant regulatory action” as specified in E.O. 12866.

Signing Authority

This document is being issued by CBP in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)), pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain CBP revenue functions.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Entry, Imports, Preference Programs, Reporting and recordkeeping requirements, Shipments.

PROPOSED AMENDMENTS TO THE REGULATIONS

It is proposed to amend part 10 of the CBP Regulations (19 CFR part 10) as set forth below.

PART 10 - ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624. 3314;

* * * * *

§ 10.8 [Amended]

2. In § 10.8, paragraph (d) is amended by removing the word “shall” each place it appears and adding, in its place, the word “will”, and by removing the words “domestic and” in the second sentence.

§ 10.9 [Amended]

3. In § 10.9, paragraph (d) is amended by removing the word “shall” each place it appears and adding, in its place, the word “will”, and by removing the words “domestic and” in the second sentence.

Jayson P. Ahern

Acting Commissioner
Customs and Border Protection

Approved: March 10, 2009

Timothy E. Skud

Deputy Assistant Secretary of the Treasury

[FR Doc. 2009-5481 Filed 03/12/2009 at 8:45 am; Publication Date: 03/13/2009]